

Amendment No. 1 to HB2159

Sexton C
Signature of Sponsor

AMEND Senate Bill No. 2621

House Bill No. 2159*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Elderly and Vulnerable Adult Protection Act of 2018."

SECTION 2. Tennessee Code Annotated, Section 39-15-501, is amended by adding the following as new subdivisions:

() "Abandonment" means the knowing desertion or forsaking of an elderly or vulnerable adult by a caregiver under circumstances in which there is a reasonable likelihood that physical harm could occur;

() "Abuse" means the infliction of physical harm or psychological injury on an elderly or vulnerable adult;

() "Adult protective services" means the division of adult protective services of the department of human services;

() "Confinement":

(A) Means the knowing restriction of movement of an elderly or vulnerable adult by a caregiver. Restricting one's movement includes, but is not limited to, the use of force, medication, intimidation, or restraint; and

(B) Does not include restricting an elderly or vulnerable adult's movement for the safety of the elderly or vulnerable adult as directed by a licensed physician treating the elderly or vulnerable adult;

()

(A) "Neglect" means:

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(i) The failure of a caregiver to provide the care, supervision, or services necessary to maintain the physical and psychological health of an elderly or vulnerable adult, including, but not limited to, the provision of food, water, clothing, medicine, shelter, medical services, a medical treatment plan prescribed by a healthcare professional, basic hygiene, or supervision that a reasonable person would consider essential for the well-being of an elderly or vulnerable adult;

(ii) The failure of a caregiver to make a reasonable effort to protect an elderly or vulnerable adult from abuse, neglect, or financial exploitation by others;

(iii) Abandonment; or

(iv) Confinement; and

(B) Neglect can be the result of repeated conduct or a single incident;

() "Physical harm" means physical pain or injury, regardless of gravity or duration;

() "Psychological injury" means the infliction of emotional or mental anguish or an injury to the intellectual functioning of an elderly or vulnerable adult as evidenced by an observable or measurable reduction in the elderly or vulnerable adult's intellectual function;

() "Serious physical harm" means physical harm of such gravity that:

(A) Would normally require medical treatment or hospitalization;

(B) Involves acute pain of such duration that it results in substantial suffering;

(C) Involves any degree of prolonged pain or suffering; or

(D) Involves any degree of prolonged incapacity;

() "Serious psychological injury" means a psychological injury of such gravity as would normally require psychological or medical treatment;

SECTION 3. Tennessee Code Annotated, Section 39-15-506, is amended by deleting subdivision (a)(1) and substituting instead the following:

(a)

(1) Following a conviction for a violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-509(a)-(c), or § 39-15-510, or at the discretion of the court for a conviction of § 39-15-509(d), the clerk of the court shall notify the department of health of the conviction by sending a copy of the judgment in the manner set forth in § 68-11-1003 for inclusion on the registry pursuant to title 68, chapter 11, part 10.

SECTION 4. Tennessee Code Annotated, Section 39-15-506, is amended by deleting subdivision (b)(1) and substituting instead the following:

(b)

(1) In addition to any other punishment that may be imposed for a violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-509, or § 39-15-510, the court shall impose a fine of not less than five hundred dollars (\$500) for Class A or Class B misdemeanor convictions, and a fine of not less than one thousand dollars (\$1,000) for felony convictions. The fine shall not exceed the maximum fine established for the appropriate offense classification.

SECTION 5. Tennessee Code Annotated, Title 39, Chapter 15, Part 5, is amended by adding the following new sections:

39-15-507.

(a) It is an offense for a person to knowingly abuse an elderly or vulnerable adult.

(b) The offense of abuse of an elderly adult is a Class E felony.

(c) The offense of abuse of a vulnerable adult is a Class D felony.

39-15-508.

(a) A person commits the offense of aggravated abuse of an elderly or vulnerable adult who knowingly commits abuse pursuant to § 39-15-507, and:

(1) The act results in serious psychological injury or serious physical harm;

(2) A deadly weapon is used to accomplish the act;

(3) The abuse is committed by two (2) or more persons; or

(4) The abuse results in serious bodily injury.

(b) In order to prosecute and convict a person for a violation of subdivision (a)(1), it is not necessary for the state to prove the elderly or vulnerable adult sustained serious bodily injury as required by § 39-13-102, but only that the abuse resulted in serious psychological injury or serious physical harm as defined in § 39-15-501.

(c) A violation of subdivision (a)(1) is a Class C felony.

(d) A violation of subdivision (a)(2), (a)(3), or (a)(4) is a Class B felony.

39-15-509.

(a) It is an offense for a caregiver to knowingly neglect an elderly or vulnerable adult, so as to adversely affect the person's health or welfare.

(b) The offense of neglect of an elderly adult is a Class E felony.

(c) The offense of neglect of a vulnerable adult is a Class D felony.

(d) If the neglect is a result of abandonment or confinement and no injury occurred, then the neglect by abandonment or confinement of an elderly or vulnerable adult is a Class A misdemeanor.

39-15-510.

(a) A caregiver commits the offense of aggravated neglect of an elderly or vulnerable adult who commits neglect pursuant to § 39-15-509, and the act:

- (1) Results in serious psychological injury or serious physical harm; or
- (2) Results in serious bodily injury.

(b) In order to prosecute and convict a person for a violation of subdivision (a)(1), it is not necessary for the state to prove the elderly or vulnerable adult sustained serious bodily injury as required by § 39-13-102, but only that the neglect resulted in serious psychological injury or serious physical harm as defined in § 39-15-501.

(c) A violation of subdivision (a)(1) is a Class C felony.

(d) A violation of subdivision (a)(2) is a Class B felony.

39-15-511.

(a)

(1) Any person having reasonable suspicion that an elderly or vulnerable adult is suffering or has suffered abuse, neglect, or financial exploitation shall report such abuse, neglect, or financial exploitation to adult protective services pursuant to title 71, chapter 6.

(2) Any person having reasonable suspicion that an elderly or vulnerable adult is the victim of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, aggravated sexual battery pursuant to § 39-13-504, or sexual battery pursuant to § 39-13-505, shall report the conduct to adult protective services pursuant to title 71, chapter 6, and to the local law enforcement agency in the jurisdiction where the offense occurred.

(b) Any person who fails to make reasonable efforts to make a report required by subsection (a) or by title 71, chapter 6, within forty-eight (48) hours of the event that causes the person to have reasonable suspicion commits a Class A misdemeanor.

(c) Upon good cause shown, adult protective services shall cooperate with law enforcement to identify those persons who knowingly fail to report abuse, neglect, or financial exploitation of an elderly or vulnerable adult.

(d) Upon commencement of criminal prosecution of abuse, neglect, or financial exploitation of an elderly or vulnerable adult, adult protective services shall provide to the district attorney general a complete and unredacted copy of adult protective services' entire investigative file excluding the identity of the referral source except as provided by subsection (e).

(e) Upon return of a criminal indictment or presentment alleging abuse, neglect, or financial exploitation of an elderly or vulnerable adult, adult protective services shall provide to the district attorney general the identity of the person who made the report in accordance with § 71-6-118.

SECTION 6. Tennessee Code Annotated, Section 39-13-202(a)(2), is amended by deleting the language "kidnapping" and substituting instead the language "kidnapping, aggravated abuse of an elderly or vulnerable adult, aggravated neglect of an elderly or vulnerable adult".

SECTION 7. Tennessee Code Annotated, Section 40-11-150(k)(1), is amended by deleting the language "§ 71-6-119, involving physical harm or abuse in which the alleged victim is an adult of advanced age as those terms are defined in § 71-6-102" and substituting instead the language "§ 39-15-507, § 39-15-508, § 39-15-509, or § 39-15-510 involving abuse, aggravated abuse, neglect, or aggravated neglect".

SECTION 8. Tennessee Code Annotated, Section 40-35-313(a)(1)(B)(i)(c), is amended by deleting the language "§ 71-6-117, or § 71-6-119" and substituting instead the language "§ 39-15-508, or § 39-15-510".

SECTION 9. Tennessee Code Annotated, Section 40-35-313(a)(3)(A), is amended by deleting the language "on or after July 1, 2004" and substituting instead the language "on or after July 1, 2004, and prior to July 1, 2018, or charged with a violation of § 39-15-507 or § 39-15-509 on or after July 1, 2018".

SECTION 10. Tennessee Code Annotated, Section 71-6-124, is amended by deleting the last sentence of subdivision (a)(1)(A) and adding the following as a new subsection:

(f) Notwithstanding § 71-6-102, for purposes of this section:

(1) "Abuse, neglect, or exploitation" includes:

(A) Abuse, neglect, and exploitation as those terms are defined in § 71-6-102; and

(B) Abuse, neglect, and financial exploitation, as those terms are defined in § 39-15-501; and

(2) "Adult" means an elderly adult or vulnerable adult as those terms are defined in § 39-15-501, but does not include a person while in the custody of intermediate care facilities for persons with intellectual disabilities and a person while receiving residential services or other services from a community provider through contracts with the department of intellectual and developmental disabilities (DIDD).

SECTION 11. Tennessee Code Annotated, Section 71-6-124, is amended by deleting the language "§ 71-6-117 or § 39-15-502" wherever it appears and substituting instead the language "§ 39-15-502, § 39-15-507, § 39-15-508, § 39-15-509, or § 39-15-510".

SECTION 12. Tennessee Code Annotated, Sections 71-6-117 and 71-6-119, are deleted in their entirety.

SECTION 13. Tennessee Code Annotated, Section 71-6-118, is amended by deleting the section and substituting instead the following:

71-6-118.

(a)

(1) The identity of a person who reports abuse, neglect, or exploitation, as those terms are defined in § 71-6-102, as required under this part is confidential and may not be revealed except as otherwise provided in this section or upon an order by a court with jurisdiction under this part for good cause shown.

(2) The identity of a person who makes a report pursuant to § 39-15-511(a), is confidential and may not be revealed except as otherwise provided in this section or upon an order by a court with jurisdiction under this part for good cause shown.

(b) Except as otherwise provided in this part, it is unlawful for any person, except for purposes directly connected with the administration of this part or title 39, to disclose, receive, make use of, authorize, or knowingly permit, participate in, or acquiesce in the use of any list or the name of, or any information concerning, persons receiving services pursuant to this part, or any information concerning a report or investigation of a report made confidential pursuant to subsection (a), directly or indirectly derived from the records, papers, files, or communications of the department of human services or divisions thereof acquired in the course of the performance of official duties.

(c)

(1) When necessary to protect elderly or vulnerable adults in a healthcare facility licensed by any state agency, the information, reports, and investigations described in subsection (b) may be disclosed to any agency providing licensing or regulation for that facility; however, the information, reports,

and investigations shall retain the protection of subsection (b) when disclosed to such agency and may not be disclosed to, or used by, any other person.

(2) Notwithstanding subsections (a) and (b), adult protective services:

(A) May report to law enforcement or public health authorities any information from its investigations or records regarding illness, disease, injuries, or any offense for which reports are made confidential under subsection (a) obtained in the course of an investigation;

(B) Shall provide to the district attorney general a complete and unredacted copy of adult protective services' entire investigative file upon the commencement of a criminal prosecution for alleged conduct involving an elderly or vulnerable adult victim obtained in the course of an investigation; however, the identity of the person who reported the alleged conduct shall only be provided pursuant to subdivision (c)(2)(C) and subsection (d); and

(C) Shall provide to the district attorney general the identity of the person reporting alleged conduct involving an elderly or vulnerable adult victim upon the return of a criminal indictment or presentment arising from the report and pursuant to written request by the district attorney and entry of a protective order preventing further release of the identity of the person reporting for any purpose other than criminal prosecution.

(3) As used in this subsection (c), "elderly or vulnerable adult" includes an adult, as defined in § 71-6-102, an elderly adult, as defined in § 39-15-501, and a vulnerable adult, as defined in § 39-15-501.

(d) Nothing in this section shall preclude the district attorney general from complying with the continuing duty to disclose evidence under the rules of discovery in a criminal prosecution.

(e) A knowing violation of subsection (a) or (b) or subdivision (c)(1) is a Class B misdemeanor.

SECTION 14. Tennessee Code Annotated, Section 71-6-110, is amended by deleting the section and substituting instead the following:

Any person who fails to make reasonable efforts to make a report required by this chapter or § 39-15-511(a) within forty-eight (48) hours of the event that causes the person to have reasonable suspicion commits a Class A misdemeanor.

SECTION 15. For the purposes of promulgating rules, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2018, the public welfare requiring it.